

CONFIDENTIAL

GENERAL COUNSEL'S OPINION NUMBER 54-5, DATED 30 APRIL 1954

Court leave may be granted for service (a) as a witness for the U.S. or the D.C., or (b) on a jury.

TO ASSISTANT DIRECTOR FOR PERSONNEL

1. This will acknowledge your memorandum of 9 March 1954 requesting an opinion of this office whether, under the provisions of Chapter 11-8 of the Federal Personnel Manual, the request of Mr. W.P.S. for court leave may properly be granted.

2. In your memorandum you report the statement by Mr. S. that on

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without charge.

3. Chapter 11-8 of the Federal Personnel Manual describes the rules and regulations pertaining to "court leave" which are defined therein as "...leave for attending court as a witness on behalf of the United States or the Government of the District of Columbia, or for jury duty." It is our opinion, therefore, that, by the express wording of the definition, Mr. S.'s request for court leave may not properly be granted.

4. You have also asked in your memorandum for our opinion whether an Agency employee who is subpoenaed to appear as a witness in matters not arising out of his official capacity by any state court or any component of a state Government may be granted court leave under the provisions of Chapter 11-8. It is our opinion, based once again on the definition given in that chapter, that an Agency employee in this situation may not be granted court leave unless by some unlikely happenstance the Federal Government became involved in an action in a state court and failed to change the venue of the action. As stated in the Federal Personnel Manual, the only two possibilities for court leave are (1) when the employee is attending any court as a witness on behalf of the United States or the District of Columbia or (2) for jury duty.

5. Since your question expressly relates to appearances by employees on matters not arising from official capacities, nothing has been said herein concerning those situations described in Chapter 11-8 and in 23 Comp. Gen. 28 when employees may be regarded as in an active duty status while giving testimony after being subpoenaed in private litigation or by some party other than the Government.

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